IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE N.V. RAMANA

W.P. No. 25925 of 2005

Dated: March 31, 2006

Between:

M/s. GTN Textiles Limited,

Chitkul village, Medak District

Rep. by its Manager, Personnel Department

Petitioner

AND

B.Kistaiah and another

Respondents

THE HONOURBALE SRI JUSTICE N.V. RAMANA

W.P. No. 25925 OF 2005

ORAL ORDER:

The petitioner, aggrieved by the award dated 21.09.2005, passed by the Labour Court in I.D. No. 92 of 2003, holding that the domestic enquiry conducted by it against respondent No.1 is vitiated, has filed this writ petition.

Respondent No.1 – workman joined the service of the petitioner - firm in the year 1992. On the ground that he absconded from duties from January to October, 1997, the petitioner issued a memo to explain his unauthorized absence. As respondent No.1 failed to explain his absence and gave an undertaking that he would not absent in future, the petitioner issued suspension order-cum-charge sheet to him on 13.12.1997, which was also not properly explained by respondent No. 1. Therefore, the petitioner-firm instituted an enquiry against respondent No.1. The Enquiry Officer, who conducted the domestic enquiry, gave sufficient opportunity to respondent No.1 to defend himself and also explained the purport and contents of the show cause notices. However, as respondent No.1 pleaded guilty of the charges, the Enquiry Officer held that the charges are proved. Based on the report of the Enquiry Officer, the petitioner – firm removed respondent No.1 from service in terms of Clause 36(e) of its Certified Standing Orders by orders dated 22.4.1998, and paid an amount of Rs.15,811/- to respondent No.1 towards full and final settlement of his dues. Thereafter, on the request of respondent No.1, the petitioner furnished copy of the enquiry report as also copy of Company Standing Orders on 12.7.2000. Thereafter, respondent No.1 in the year 2003, raised and industrial dispute in I.D. No.92 of 2003 seeking to set aside the order 26.4.1998, and the Labour Court by reason of the award impugned in this writ petition, held that as respondent No.1 is not well versed in English and no procedure was followed in the conduct of domestic enquiry, the domestic enquiry is vitiated, and directed the petitioner - firm to lead evidence.

On 16.12.2005, this Court while ordering notice before admission, granted interim stay of the award. Respondent No.1 – workman, has filed petition in W.V.M.P. No. 246 of 2006 seeking to vacate the interim order.

The learned counsel for the petitioner mainly contended that the finding recorded by the Labour Court that the domestic enquiry is vitiated is contrary to the record. Respondent No.1 was given ample opportunity by the Enquiry Officer to defend his case in the domestic enquiry. He submitted that the domestic enquiry was conducted in accordance with the Rules and principles of natural justice.

The learned counsel for respondent No.1 on the other hand contended that it is the duty of the Labour Court to decide the issue of

validity or otherwise of the domestic enquiry as a preliminary issue, and the Labour Court having considered the said issue as preliminary issue, found that the domestic enquiry was vitiated, and while holding so had permitted the petitioner to lead evidence to establish the charges leveled against respondent No.1, and no exception can be taken thereto.

The law is well settled that the Labour Court has to decide the question of validity or otherwise of the domestic enquiry as preliminary issue. In ***The Cooper Engineering Ltd. v. P. P. Mundhe***, the apex Court while dealing with similar controversy, namely the validity or otherwise of the domestic enquiry, as a preliminary issued, held:

> *"…We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated, the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence. It will not be thereafter permissible in any proceeding to raise line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication…"*

In the instant case, the Labour Court before proceeding to consider the matter on merits, considered the question as to the validity or otherwise of the domestic enquiry, as preliminary enquiry. While dealing with the said question, the Labour Court found that there was no record to show that either before or after appointing Enquiry Officer, copy of charge sheet was served on the workman alleging about his absence, and that there was no material to show that enquiry notice was served on respondent No.1 - workman on a particular date. This apart, the Labour Court found that the statements were recorded in English, and having regard to the fact that respondent No.1 - workman was not well-versed in English language, and in the wake of specific stand taken by respondent No.1 – workman that the Enquiry Officer had taken his signatures

without explaining the consequences of the proceedings, the Labour Court came to the conclusion that the domestic enquiry is vitiated, and no exception can be taken to the award passed by the Labour Court deciding the validity or otherwise of the domestic enquiry, as preliminary issue and holding that the domestic enquiry is vitiated.

Hence, the writ petition fails, and the same is accordingly dismissed. The petitioner, as directed by the Labour Court, may lead evidence to establish the alleged charges, and take all the pleas that are available to them. No costs.

N.V.RAMANA, J.

March 31, 2006

MAS